

FEDERAL MAGISTRATES COURT OF AUSTRALIA

SINGH v MINISTER FOR IMMIGRATION & ANOR [2013] FMCA 243

MIGRATION – Review of Migration Review Tribunal decision – refusal of a skilled visa – applicant providing a bogus document in support of his visa application – no jurisdictional error.

Migration Act 1958 (Cth), ss.65, 97, 359A
Migration Regulations 1994 (Cth)

Batra v Zhang v Minister for Immigration & Anor [2012] FMCA 544
Mudiyanselage v Minister for Immigration & Anor [2012] FMCA 887
Mudiyanselage v Minister for Immigration [2013] FCA 266
Rafi v Minister for Immigration & Anor [2012] FMCA 1002
Singh v Minister for Immigration & Anor [2012] FMCA 145
Zhang v Minister for Immigration & Anor [2012] FMCA 1011

Applicant:	GURINDER SINGH
First Respondent:	MINISTER FOR IMMIGRATION & CITIZENSHIP
Second Respondent:	MIGRATION REVIEW TRIBUNAL
File Number:	SYG 2715 of 2012
Judgment of:	Driver FM
Hearing date:	11 April 2013
Delivered at:	Sydney
Delivered on:	11 April 2013

REPRESENTATION

The Applicant appeared in person

Counsel for the Respondents: Mr T Reilly

Solicitors for the Respondents: Sparke Helmore

ORDERS

- (1) The application is dismissed.
- (2) The applicant is to pay the first respondent's costs and disbursements of and incidental to the application, fixed in the sum of \$5,400.

**FEDERAL MAGISTRATES
COURT OF AUSTRALIA
AT SYDNEY**

SYG 2715 of 2012

GURINDER SINGH
Applicant

And

MINISTER FOR IMMIGRATION & CITIZENSHIP
First Respondent

MIGRATION REVIEW TRIBUNAL
Second Respondent

REASONS FOR JUDGMENT

(revised from transcript)

1. I have before me a judicial review application filed on 22 November 2012, seeking review of a decision of the Migration Review Tribunal (Tribunal) made on 30 October 2012. The Tribunal affirmed a decision of the delegate of the Minister not to grant Mr Singh a skilled provisional class VC visa. This is the second occasion on which a Tribunal decision concerning Mr Singh's visa application has come before me. On the first occasion, I dealt with the matter in my judgment of *Singh v Minister for Immigration & Anor*¹. The background facts are detailed in that judgment.

¹ [2012] FMCA 145

2. In addition, the following statement of background facts is derived from the Minister's written submissions filed on 4 April 2013.
3. Mr Singh is a citizen of India, who first travelled to Australia in April 2007². He applied for the visa on 7 July 2009³. The delegate refused the visa on 31 August 2010⁴. Mr Singh applied to the Tribunal for review on 16 September 2010⁵. After an earlier decision of the Tribunal dated 31 August 2011 was set aside in my earlier judgment in *Singh*⁶, the Tribunal wrote to Mr Singh pursuant to s.359A of the *Migration Act 1958* (the Migration Act) on 20 June 2012⁷. The Tribunal invited Mr Singh to a hearing on 10 October 2012⁸, which Mr Singh declined⁹.
4. The Tribunal found that Mr Singh did not meet clause 485.224 ("The applicant...satisfies public interest criterion...4020..."). Public interest criterion (PIC) 4020 is set out in the Tribunal's reasons at [8]¹⁰. The Tribunal found that Mr Singh's first skills assessment of 28 September 2009 from Trades Recognition Australia (TRA) for assessment of his skills as a cook¹¹ was obtained on the basis of false or misleading statements and was therefore a "bogus document" within s.97 of the Migration Act¹². As Mr Singh had caused this document to be given to the delegate in support of his visa application the Tribunal found that he did not meet the requirements of PIC 4020(1)(a)¹³. The Tribunal declined to waive this requirement pursuant to PIC 4020(4)¹⁴. Accordingly Mr Singh did not satisfy clause 485.224, and so the visa had to be refused¹⁵.

² court book (CB) 175 [11]

³ CB 1-9

⁴ CB 54-60

⁵ CB 61-67

⁶ CB 143

⁷ CB 148-149

⁸ CB 160-161

⁹ CB 168-169

¹⁰ CB 173-174

¹¹ CB 45-46

¹² CB 179 [32]

¹³ CB 179 [33]

¹⁴ CB 179-180 [34]-[36]

¹⁵ see s.65(1)(b) of the Migration Act

5. I have before me as evidence the court book filed on 12 December 2012.

6. The application contains two grounds:

1. *The Tribunal erred in concluding that the purported skills assessment outcome letter dated 28 September 2009 issued by Trade Recognition Australia (TRA) was a bogus document and thus found the Applicant did not meet the Public Interest Criterion 4020(1) in Schedule 4 to the Migration Regulations 1994.*

Particulars

- (a) *The purported skills assessment outcome letter dated 28 September 2009 was issued by TRA at a time when TRA was not properly approved and specified as a relevant assessing authority. Accordingly, the effect of the purported skills assessment outcome is nullity and must not be taken into consideration by the Tribunal.*
2. *In the alternative, the Tribunal failed to give regard to all information before it in concluding that the purported skills assessment outcome letter dated 28 September 2009 issued by Trade Recognition Australia (TRA) was a bogus document.*

Particulars

- (b) *The Tribunal failed to have regard to an email communication dated 27 July 2011 (after the purported investigation undertaken by the First Respondent's Department and TRA) from the TRA confirming the Applicant's skills assessment outcome remains valid.*

7. Earlier in these proceedings, Mr Singh was legally represented, but his solicitors withdrew from the record by notice filed on 9 April 2013. He represented himself at today's hearing.

8. Mr Singh made oral submissions at today's hearing. It is plain that Mr Singh is concerned about the Tribunal's decision in two respects. First, he contests that he provided false or misleading information to TRA which led to its assessment in 2009. Secondly, he feels that he has been unfairly treated as he has provided more recently additional

information to TRA which, it appears, has led to a second provisional TRA assessment¹⁶.

9. However, the Tribunal wrote to Mr Singh through his legal advisors, pursuant to s.359A of the Migration Act in a letter dated 20 June 2012¹⁷. Mr Singh's legal advisors chose to limit their response to legal issues. Further, Mr Singh, apparently on advice, declined to attend the hearing to which he was invited by the Tribunal as presently constituted. The factual issues which Mr Singh sought to raise in oral argument before me could have been raised before the Tribunal. It may be unfortunate that those factual issues were not raised before the Tribunal. However, as I explained to Mr Singh in oral argument, if the Tribunal decision is a legally valid one, only the Minister can change it.
10. The Court must deal with the grounds advanced in the application. In that regard I agree with the Minister's submissions. The first ground claims that Mr Singh's first skills assessment of 28 September 2009 was a "nullity" and "must not be taken into consideration by the Tribunal" because at the time it was issued the TRA was not properly approved as a relevant assessing authority. However as the Tribunal notes at [8]¹⁸, clause 485.224 is a "time of decision" criterion, so the relevant date for determining whether clause 485.224 is applicable to Mr Singh is that of the Tribunal's decision on 30 October 2012. As at that date, the TRA had been validly specified as a relevant assessing authority for the purposes of regulation 2.26B of the *Migration Regulations 1994* (Cth) in relation to persons (such as Mr Singh) who applied for a visa before 1 July 2010 by Legislative Instrument IMMI 11/068¹⁹. The Tribunal could therefore have regard to the first skills assessment. Even leaving aside the effect of IMMI 11/068, on the basis of currently authority I accept that the Tribunal was entitled to have regard to the fact that Mr Singh had in fact submitted a bogus document, being the first skills assessment, and whether TRA was validly appointed at the time of this skills assessment was not relevant to whether the skills assessment met the definition of a "bogus document"²⁰.

¹⁶ reproduced at CB 158

¹⁷ CB 148

¹⁸ CB 173

¹⁹ see *Singh* at [40], [69]; *Zhang v Minister for Immigration & Anor* [2012] FMCA 1011 (Barnes FM)

11. I am unable to conclude that the decisions of this Court relied upon by the Minister bearing upon that question are wrong. They should, therefore, be followed. In addition, I consider myself bound by the observations of the Federal Court on appeal from this Court in *Mudiyanselage v Minister for Immigration* at [28]-[35].
12. It is unnecessary for me to revisit my earlier decision in *Singh*. It is sufficient to conclude, on the basis of the available authorities, that a TRA assessment may be a bogus document, regardless of whether the TRA was authorised to make the assessment. Accordingly the first ground fails.
13. The second ground refers to an email reproduced in the court book at 89. There is, in my view, no substance to that ground, by reference to the email. The email from an officer of TRA to the Tribunal was apparently sent on 27 July 2011. In response to an inquiry from the Tribunal, the officer responds somewhat cryptically that, at that date, TRA regarded the skills assessment as still valid. The email predated my earlier decision in *Singh*, which dealt with the issue of the validity of the earlier Tribunal decision, based on that skills assessment.
14. Whatever view one takes of that legal issue, and whatever view one takes of the significance of the more recent and provisional TRA assessment concerning Mr Singh's qualifications, I am bound to conclude that the Tribunal was entitled to treat the 2009 TRA assessment as a bogus document for the purposes of its decision, and the email had no significance in the Tribunal's consideration. Ground 2 therefore also fails.
15. I find that Mr Singh has failed to demonstrate any jurisdictional error in the decision of the Tribunal. The decision is therefore a privative clause decision, and the application must be dismissed. I will so order.
16. The application having been dismissed, the Minister seeks an order for costs, fixed in the sum of \$5,400. I am satisfied that costs of that order have been reasonably and properly incurred on behalf of the Minister on a party and party basis. Mr Singh is concerned about his capacity to

²⁰*Batra v Zhang v Minister for Immigration & Anor* [2012] FMCA 544 (Riley FM) at [50-51]; *Rafi v Minister for Immigration & Anor* [2012] FMCA 1002 (Hartnett FM) at [30]; *Mudiyanselage v Minister for Immigration & Anor* [2012] FMCA 887 (Emmett FM) at [20], and *Mudiyanselage v Minister for Immigration* [2013] FCA 266 (Tracey J)

pay those costs, at least in the short term. As I pointed out to him, however, he is free to negotiate terms of payment with the Minister's Department, and if in a position of hardship, he may request a waiver of the debt.

17. I will order that Mr Singh is to pay the first respondent's costs and disbursements of and incidental to the application, fixed in the sum of \$5,400.

I certify that the preceding seventeen (17) paragraphs are a true copy of the reasons for judgment of Driver FM

Date: 12 April 2013